

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 96-2611; Submitted on the Record;
Issued September 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

This case has previously been before the Board. By decision dated August 30, 1991,¹ the Board affirmed the Office's October 29, 1990 decision denying appellant's request for reconsideration of its schedule award but set aside the Office's March 9, 1990 decision, which found that appellant had not established that he sustained a recurrence of disability on May 23, 1987 causally related to his June 25, 1986 employment injury. On remand, the Office found that appellant was entitled to compensation from May 27 to July 22, 1987. By decision dated July 11, 1995, the Office found that appellant had not established that he sustained a recurrence of disability on or after February 17, 1995 causally related to his June 25, 1986 employment injury. Appellant requested reconsideration on July 10, 1996 and submitted additional evidence. In a decision dated August 14, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and insufficient to warrant review of the prior decision.

The only decision over which the Board has jurisdiction is the Office's August 14, 1996 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated July 11, 1995 and

¹ Docket No. 91-660.

August 27, 1996, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the decision dated July 11, 1995.²

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”³

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁶

In the present case, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that he sustained a recurrence of disability on or after February 17, 1995 causally related to his accepted June 25, 1986 employment injury of a contusion of both knees and bilateral chondromalacia of the knees. In support of his request for reconsideration, appellant submitted office visit notes from Dr. Sullivan R. Bryant, an osteopath, dated January 6 to 26, 1995. Appellant further submitted letters, which he received from the Office dated January 3 and 7, 1992. This evidence, however, duplicated evidence already contained in the case record and thus does not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.⁷

Appellant further submitted a decision dated January 29, 1996 from the Merit System Protection Board which affirmed his removal from employment for unsatisfactory service. However, this evidence is not pertinent to the issue in the instant case, which is whether appellant had a recurrence of disability due to his June 25, 1986 employment injury. The issue of

² See 20 C.F.R. §§ 501.2(c), 501.3(d).

³ 20 C.F.R. § 10.138(b)(1).

⁴ See 20 C.F.R. § 10.138(b)(2).

⁵ *Daniel Deparini*, 44 ECAB 657 (1993).

⁶ *Id.*

⁷ *Richard L. Ballard*, 44 ECAB 146 (1992).

whether appellant has any further disability due to his accepted employment injury is a medical question which can only be resolved by the submission of medical evidence.⁸

In his request for reconsideration, appellant argued that Dr. Bernie L. McCaskill, an Office referral physician, relied upon a statement of accepted facts related to another employment injury of appellant in rendering his opinion. In his April 13, 1995 report, Dr. McCaskill discussed appellant's history of employment injuries and found that appellant had no further objective evidence of a knee injury and could perform his usual employment. Thus, as Dr. McCaskill addressed the relevant issue of whether appellant had any residual disability causally related to his accepted knee injury, appellant has not raised a legal argument sufficient to require reopening of the case for merit review.

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁹ Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

The decision of the Office of Worker's Compensation Programs dated August 14, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 3, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁸ *Ronald M. Cokes*, 46 ECAB 967 (1995).

⁹ *Rebel L. Cantrell*, 44 ECAB 660 (1993).